

SETTLEMENT AGREEMENT AND MUTUAL RELEASE – SECURITY

This Settlement Agreement And Mutual Release (together with any exhibits hereto, the “**Agreement**”) is effective as of this 29th day of October 2014 (the “**Effective Date**”), by and between Vix Technology (USA) Inc. (“**Vix**”), on the one hand, and, on the other hand, Snohomish County Public Transportation Benefit Area, Kitsap County Public Transportation Benefit Area, Central Puget Sound Regional Transit Authority, Washington State Department of Transportation, Ferries Division, Pierce County Public Transportation Benefit Area Corporation, City of Everett, and King County (collectively, the “**Agencies**”). Vix, each of the Agencies, and the Agencies together are referred to herein individually as a “**Party**,” and Vix and the Agencies are referred to herein collectively as the “**Parties**.”

I. RECITALS

1. The Parties have a binding contract between them for the design, building, maintenance, and operation of a regional fare card system (“**RFC System**”) to facilitate payment for transit services on the public transportation services operated by each of the Agencies (the “**ORCA Contract**” or “**Contract**”).

2. Unless specifically defined herein, all capitalized terms have the same meaning as in the ORCA Contract.

3. In January 2014, the Parties signed an agreement (the “**Tech Agreement**”) confirming that the Parties had established a Technical Leadership Committee (“**Tech Team**”) to address current and emerging technical issues in the RFC System. The Tech Agreement is attached as Exhibit 1 to this Agreement.

4. The Tech Agreement further confirmed that the Tech Team had developed the ORCA Priority 1 Remediation Plan (“**P-1**”) to address urgent technical issues. The current P-1 plan is attached as Exhibit 2 to this Agreement.

5. The Tech Agreement indicated that the Parties disagreed about cost allocations for the technical work and desired to resolve their differences through mediation.

6. Through the Tech Agreement, the Parties agreed to payment provisions for the P-1 work while the mediation is pending.

7. Vix contends that it delivered the RFC System to the Agencies at the time of Full System Acceptance and is now in an operating and maintenance phase. Vix contends that any change that moves the RFC System beyond the state it was in at Full System Acceptance is new work for which it must receive additional payment.

8. Vix further contends that “**Update**” is defined narrowly by the Contract and that the work at issue in this mediation is comprised of “**Upgrades**” that are changes to the system constituting new work. Vix therefore seeks additional payment for this work.

9. The Agencies contend that the ORCA Contract obligates Vix both to maintain the RFC System under a high standard and to provide evolving security measures that account for technological changes.

10. The Agencies further contend that an "Update" is broadly defined to encompass any work required to fully maintain system functionality, replace outmoded technology, and meet evolving security needs. Accordingly, the Agencies contend that Vix must perform the work at issue in this mediation for no additional fees.

11. In the interests of preserving the contractual and business relationship between the Parties, providing best service to the public, and resolving the Parties' dispute regarding work to ensure the security of the RFC System, the Parties have sought resolution of various issues through mediation and agree to settle their differences as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and covenants set forth in this Agreement, the Parties agree as follows:

II. TERMS AND CONDITIONS OF SETTLEMENT

1. P-1 and P-2(a) Work

The "Interim Agreement," attached hereto as Exhibit 3, is incorporated into this Agreement and will be subject to the mutual release provisions of this Agreement notwithstanding language to the contrary in the Interim Agreement.

2. Security Work

a. Security Obligation

Nothing in this Agreement alters Vix's obligations under the Contract regarding system security or any other issue, unless expressly stated otherwise. Vix is responsible for the security of all aspects of the RFC System except portions of the RFC System or the System's operation under the Agencies' sole control. The parties agree that the following is a non-exclusive list of aspects of the RFC System over which the Agencies have sole control:

- Security scanning of devices hosted on Agency controlled networks;
- Network segmentation of devices hosted on Agency controlled networks; and
- Physical security of any device not on Vix or Vix's hosted back office premises.

The terms of this Agreement, together with the Contract, are intended to place on Vix as broad an obligation as possible to ensure the security of the RFC System.

In particular, Vix agrees that it has responsibility for general security defined in Sections 3.I-11 and 6.III-1.3 and CDRL 31 of the Contract and the security standards described in section (b) below, as such standards may be updated. Vix will provide, at the start of each calendar quarter, External and Internal PCI Scan results to the Security Review Board, pursuant to the ORCA Contract. Vix will comply with the provisions of Sections 3.I-11 and 6.III-1.3 and be responsible for all ongoing security costs associated with ensuring general security defined in Sections 3.I-11 and 6.III-1.3 and CDRL 31 of the Contract and in complying with the security standards described in section (b) below. This paragraph is not intended to impose responsibility on Vix in the event the Agencies fail to follow Vix's advice regarding security for elements of the RFC System under the Agencies' sole control.

b. Security Standards

At all times, Vix shall comply with all applicable security standards as such standards currently exist and as they might appear or evolve in the future, including, but not limited to, VISA and MasterCard's Data Security requirements as embodied in VISA's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), the latest version of the Payment Card Industry Data Security Standards (PCI-DSS) (currently version 3.0), and any and all applicable federal, state, and local laws and regulatory standards and requirements. This is complementary to Vix's duty under Sections 3.I-11 and 6.III-1.3 and CDRL 31 of the Contract to provide all of its Work in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry. The separate question of who bears the cost of security work, and whether portions of that work is New Work, is addressed in subsection (f) below.

Vix will provide reasonable coordination and support related to implementation of improvements and audits of the Agencies' security responsibilities.

c. Audit Compliance

As part of its compliance with the security standards listed above in sections (a) and (b), Vix will make any changes to the RFC System required to obtain a clean annual Security Audit, as required by the Contract. To fulfill its security audit obligations under the ORCA Contract, Vix will arrange for a system wide audit in accordance with the time frame set forth in the Contract: (i) a General Security Audit in compliance with the provisions of Sections 3.I-11 and 6.III-1.3 and CDRL 31 of the Contract and (ii) an audit of the security of the cardholder data environment and compliance with PCI-DSS and other applicable cardholder data environment security standards. The audit will cover both General Security and PCI-DSS issues. Any items found noncompliant during these audits will be remediated by the Party having control of that portion of the RFC System before

the date of the next annual audit or within the specific time frame required by the security standard, whichever date is earlier.

d. Security Officer

On or before December 31, 2014, Vix will hire a qualified security officer solely for the purpose of supporting Vix's performance of the ORCA Contract and who will be responsible for Vix's coordination of (i) monitoring and analyzing the RFC System on an ongoing basis to detect any possible security flaws or vulnerabilities in addition to investigations performed during any audit, (ii) managing and executing work needed to comply with the security standards listed above in section (a) and (b) and the findings of any security audit, and (iii) preparing and delivering monthly written reports to the Agencies explaining Vix's work and progress to comply with applicable security standards, known risks, and mitigation measures.

e. Future Security Work

Vix will take a proactive approach to maintaining the security of the RFC System. The administration and communications regarding security work will be through the Security Review Board. Specifically, by December 31 of the first year of this agreement and by October 31 of each year of this agreement thereafter, Vix will do the following:

- i. Vix will provide the Agencies with a written report of any known new hardware and/or new versions of an operating system or software application that will be required to be implemented in the coming two calendar year time frame in order for all elements of the RFC System to be compliant with all applicable security standards listed in section (a) and (b) above. By December 31 of the first year of this agreement and by October 31 of each year of this agreement thereafter, the Parties shall agree through the Tech Team on the scope and costs of an annual work plan ("**Annual Work Plan**") to comply with required security standards listed in section (a) and (b) above, to be approved by the Security Review Board. As part of the Annual Work Plan, Vix will provide a summary and detailed description of daily, weekly, and monthly administrative functions to be undertaken to maintain system security; Vix will provide a summary of all planned tests (*e.g.*, internal and external scans, penetration tests) and audits for the upcoming year; Vix will provide a schedule for all known hardware updates and will timely notify the Agencies of such updates that are not included in this annual report; and Vix will provide a schedule and explanation of priorities for all planned work activity for the coming calendar year.

- ii. Vix will provide a threat and risk assessment identifying known and emerging security threats, along with any changes in the security standards listed above in sections (a) and (b).
- iii. Vix will provide an analysis of known or expected changes that could impact the security of the RFC System and the work, hardware, and software needed to maintain the security of the RFC System (*e.g.*, upgrading from Windows Server 2003), along with preliminary plans to address and respond to such changes.
- iv. Vix will provide a description of and time frame for deploying all planned software and patch release programs and will timely notify the Agencies of such programs that are not included in this annual report.
- v. Vix will provide a report, as consistent with Sections 3.I-11 and 6.III-1.3 and CDRL 31 of the Contract, explaining current applicable security standards and threats and its plan of response in the event of a security breach.

On a monthly basis, Vix will provide written reports to the Agencies on its work and progress to comply with applicable security standards, known risks, and mitigation measures.

f. Compensation

On an annual basis, the Agencies will pay Vix 50 percent of the price to meet the security requirements described above in sections II(2)(a)-(e), as determined in the Annual Work Plan. For any new work to meet security requirements in addition to work required by Sections 3.I-11 and 6.III-1.3 and CDRL 31 of the Contract or the latest version of PCI-DSS, the Agencies will bear the entire cost. On a quarterly basis, Vix will provide to the Agencies written reports and invoices documenting the work completed to meet these new security requirements and the costs incurred for doing so, which invoices shall be paid within 30 days unless otherwise contested. These invoices and reports will include complete and detailed descriptions of such work and related costs. Any disputes over such reports or invoices will be referred to mediation before Stewart Cogan or, if Mr. Cogan is not available, to a mutually agreed upon mediator, whom the Parties agree to select through good faith negotiations.

Vix will cover the costs of the annual third-party Security Audit of the entire RFC System required by the ORCA Contract up to \$30,000, and the Agencies will pay all other costs associated with the annual third-party Security Audit.

The Agencies also will pay Vix \$15,000 per month to account for the new Security Officer Vix will hire pursuant to Section 2(d).

The Agencies also will pay Vix \$30,000 for the development and approval of the Annual Work Plan, \$7,500 per quarter if Vix passes scheduled quarterly scans, \$50,000 as an incentive for timely completion and delivery of the third-party Security Audit, and \$5,000 per month if Vix timely delivers monthly security reports as described above.

3. **Mutual Release.**

With respect to the issues addressed in the Interim Agreement and the security issues addressed in this Agreement, and only with respect to these issues, Vix, on the one hand, and the Agencies, on the other hand, forever release and discharge each other and its or their respective subsidiaries, parents, divisions, affiliates, officers, directors, owners, shareholders, members, managers, associates, predecessors, successors, assigns, agents, partners, employees, insurers, representatives, attorneys, and any and all persons acting by, through, under or in concert with them, of and from any and all manner of action(s), cause(s) of action in law or in equity, and any suits, debts, liens, claims, demands, damages, rights, losses, costs, and/or expenses, of any nature whatsoever, now known.

4. **Public Document.**

This Agreement, including, but not limited to, the attached Exhibits, is a public document.

5. **Representations and Warranties.**

a. **Organization, Authorization**

Vix, on the one hand, and the Agencies on the other hand, represent and warrant to each other that (i) each Party has full and complete power, capacity, and authority to enter into this Agreement and to consummate all transactions and perform all obligations contemplated by this Agreement, (ii) the execution of this Agreement has been duly authorized by all necessary corporate or official action, if any, on the part of each Party, and (iii) this Agreement constitutes a legal, valid, and binding obligation, enforceable in accordance with its terms.

b. **Company Consent and Approval**

Vix and the Agencies represent and warrant that (i) all necessary third-parties have consented to and approved this agreement, or (ii) such consent and approval are not required for the execution of this Agreement or the performance by Vix and/or the Agencies of their obligations herein and therein.

6. **Counterparts.**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as the original instrument and as if all the Parties to the counterparts had signed the same instrument. The Parties also agree that facsimile, portable document format ("PDF"), scanned, and/or electronic signatures shall have the same effect as manually signed originals and shall be effective upon transmission.

7. **Construction.**

This Agreement was negotiated and prepared by the Parties and their respective attorneys. The Parties acknowledge and agree that the rule of construction that an ambiguous contract should be construed against the drafter shall not be applied in any construction or interpretation of this Agreement. The singular form of a word shall also mean and include to the plural (and vice versa), and the masculine gender shall also mean and include the feminine and gender neutral (and vice versa). This Agreement is not intended to alter existing contractual obligations, except where expressly agreed.

8. **No Third-Party Beneficiaries.**

This Agreement is for the benefit of each Party individually and the Parties collectively. There are no intended third-party beneficiaries, and the Parties expressly disclaim any unintended third-party beneficiaries to this Agreement or any part of this Agreement.

9. **Governing Law.**

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington as of the Effective Date. King County Superior Court will be the exclusive venue for resolving any dispute arising out of this Agreement.

10. **Entire Agreement.**

This Agreement, including any attached exhibits, constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. Other than the Contract, no other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

11. **Severability.**

The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

12. **Headings and Captions.**

The headings and captions inserted into this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

13. **Attorney's Fees.**

If any Party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal shall be entitled to its reasonable costs, expenses, including any consulting or expert expenses, and attorney's fees to be paid by the other party.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, effective as of the Effective Date listed above.

READ AND AGREED TO:

By: _____

Vix (USA) Inc.

Name: _____

Title: _____

Date: _____

By: _____

Joint Board

Name: _____

Title: _____

Date: _____

And By _____

Dated: _____

Kevin Desmond, King County
(King County Metro Transit)

Dated: _____

Emmett Heath, Snohomish County Public
Transpiration Benefit Area Corporation
(Community Transit)

Dated: _____

Tom Hingson, City of Everett (Everett Transit)

Dated: _____

John Clauson, Kitsap County Public
Transportation Benefit Area Authority (Kitsap
Transit)

Dated: _____

James Walton, Pierce County Public
Transportation Benefit Area Corporation (Pierce
Transit)

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READ AND AGREED TO:

By: _____

Vix (USA) Inc.

Name: _____

Title: _____

DOUGLAS W. THOMAS
GENERAL MANAGER

Date: _____

10/17/14

By: _____

Joint Board

Name: _____

Title: _____

Date: _____

And By _____

Dated: _____

Kevin Desmond
Kevin Desmond, King County
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10/20/14
Kevin Desmond, King County
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Dated:

Tom Hingson
10/24/14
Tom Hingson, City of Everett (Everett Transit)

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GENERAL MANAGER

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Joint Board

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(Community Transit)

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Tom Hingson, City of Everett (Everett Transit)

Dated:

John Clauson, Kitsap County Public
Transportation Benefit Area Authority (Kitsap
Transit)

Dated:

James Walton, Pierce County Public
Transportation Benefit Area Corporation (Pierce
Transit)

Dated: 10/21/14
Brian McCartan

Brian McCartan, Central Puget Sound Regional
Transit Authority (Sound Transit)

Dated: 10/29/14
Lynne Griffith

Lynne Griffith, WSDOT Ferries Division
(Washington State Ferries)

Dated: 10/21/14
Brian McCartan

Brian McCartan, Central Puget Sound Regional
Transit Authority (Sound Transit)

Dated: _____

Lynne Griffith, WSDOT Ferries Division
(Washington State Ferries)